STATE OF MICHIGAN

COURT OF APPEALS

COUNTRYWIDE HOME LOANS, INC, d/b/a AMERICA'S WHOLESALE LENDER,

Plaintiff/Cross-Appellant,

v

PEOPLES CHOICE HOME LOAN INC,

Defendant/Cross-Appellee,

and

BAYVIEW LOAN SERVICING, LLC,

Defendant/Cross-Appellee/Cross-Defendant,

and

WACHOVIA MORTGAGE CORPORATION,

Defendant/Cross-Appellee/Cross-Defendant,

and

LAWRENCE RUBENS,

Defendant/Cross-Plaintiff

and

MARGO RUBENS, AMIRA BUTLER, and FIRST MAGNUS FINANCIAL CORPORATION,

Defendants.

UNPUBLISHED
December 6, 2011

No. 298399
Oakland Circuit Court
LC No. 2008-093634-CH

Before: SERVITTO, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

This case involves identity theft and mortgage fraud in which four lenders assert claims to the same property. On February 9, 2010, the trial court entered an order granting relief to identity theft victims Margo Rubens and Lawrence Rubens; no party now asserts the court erred. Thereafter, the trial court entered several orders having the net effect of awarding priority in the mortgaged property to LaSalle Bank, N.A., as successor to People's Choice Home Loans, Inc. For the reasons discussed hereafter, we conclude the trial court abused its discretion. We therefore vacate the trial court's opinion and order regarding priority dated February 22, 2010, vacate the trial court's two orders of May 14, 2010, quieting title and granting other relief to LaSalle Bank. We also remand this matter to the trial court for entry of an order granting plaintiff Countrywide Home Loans, Inc. an equitable mortgage to the extent its loan paid off the mortgages of American Home Mortgage and American Brokers Conduit by which an imposter of Margo Rubens purchased the property from the last legitimate owner, quieting Countrywide's title and granting it priority over the other defendant claimants.

I. FACTS AND PROCEEDINGS

Plaintiff brought this action to quiet title to real property located at 1955 Quarton Road, Bloomfield Township, to which it had been granted a mortgage. Plaintiff named as defendants three other lenders that also asserted a mortgage in the property: People's Choice Home Loans, Inc. (succeeded by LaSalle Bank); Bayview Loan Servicing, L.L.C. (Bayview), assignee of First Magnus Financial Corporation; and Wachovia Mortgage Corporation (Wachovia). Plaintiff also named as defendants its purported mortgagor, Margo Rubens, and the purported mortgagors of the other lenders, Amira Butler (LaSalle), and Lawrence Rubens (Bayview and Wachovia).

It is not disputed that all lenders received forged mortgages or received a mortgage from someone with no interest in the property in a case of serial identity theft. The identity theft and mortgage fraud was most likely perpetrated by Lawrence Rubens' sister, Karen Rubens, now deceased, or her business associates that included Amira Butler. Both Rubens testified in depositions that they had no interest in the subject property, and that all mortgage documents bearing their signatures were forgeries. When deposed, Butler invoked the Fifth Amendment and refused to answer most questions. In a hand-written statement she gave to the police, Butler stated she was a victim of identity theft by Karen Rubens. She also stated in her written statement that she "had not taken out" the mortgage to People's Choice Home Loans (LaSalle).

On February 9, 2010, the trial court entered an order granting relief to Margo Rubens and Lawrence Rubens declaring that they (1) do not presently have, and have never had, any interest of any kind in the subject property, (2) have no obligation or liability as to any loan or mortgage in their name with respect to it, and (3) that they were the victims of forgery, identity theft and mortgage fraud. The court's order also reformed, *ab intito*, the deed, discussed *infra*, from the Executive Relocation Corporation to Margo Rubens, "to delete the name of, and any reference to, Margo Rubens whatsoever and the name of Jane Doe is inserted in her place and stead." Similarly, all mortgages and loan documents in the names Margo Rubens and Lawrence Rubens

were reformed, *ab intito*, to Jane Doe and John Doe, respectively. Although Wachovia and Bayview each filed an appeal including this order, those appeals have been dismissed.[1]

Executive Relocation Corporation apparently was the last legitimate owner of the subject property. It conveyed the property to Margo Rubens by warranty deed dated December 6, 2004, "but not effective until delivery to grantee on" July 14, 2005. The deed was recorded September 27, 2005, and reflected a purchase price of $1,000,000. Also on July 14, 2005, Margo Rubens conveyed two mortgages: one to American Home Mortgage Acceptance, Inc., securing a loan of $800,000 and one to American Brokers Conduit securing a loan of $200,000. These mortgages were recorded on September 27, 2005. Plaintiff produced settlement statements reflecting that the property was purchased with loans secured by these mortgages.

On December 15, 2005, Countrywide loaned Margo Rubens $1,050,000 to refinance the property, and Rubens conveyed a mortgage to plaintiff for the same amount. Plaintiff produced a settlement statement regarding this transaction reflecting payoffs of two mortgages held by American Home Mortgage for $817,138.20 and $208,816.16. Plaintiff asserts the second mortgage payment was actually to American Brokers Conduit. On March 13, 2006, Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for American Home Mortgage Acceptance, executed a discharge of its July 14, 2005 mortgage given by Margo Rubens; this discharge was recorded on March 31, 2006. For unknown reasons, Countrywide did not timely record the Margo Rubens' mortgage of December 15, 2005. An affidavit concerning the mortgage Margo Rubens granted Countrywide was executed on February 8, 2008 and recorded on February 21, 2008. MERS did not issue a discharge of the Margo Rubens' mortgage to American Brokers Conduit until August 1, 2008; it was recorded August 8, 2008.

On July 31, 2006, Amira Butler (or a person purporting to be her) conveyed a mortgage for the subject property to People's Choice Home Loan (LaSalle) to secure a loan to Butler of $840,000; this mortgage was recorded on December 11, 2007. LaSalle produced a copy of a settlement statement reflecting Butler's purported purchase of the subject property from Margo Rubens for $1,000,000. The settlement statement also reflected a $10,000 earnest money payment from Butler to Rubens. A statement from Butler's credit union account and a copy of a $10,000 check also supported the alleged $10,000 payment from Butler to Rubens; however, no deed either recorded or unrecorded was produced reflecting a conveyance of the subject property from Margo Rubens to Amira Butler, who did not contest this action.

A person purporting to be Lawrence Rubens conveyed the next two fraudulent mortgages regarding the subject property. Rubens executed a mortgage on January 26, 2007 to MERS as

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[1] Bayview's claim of appeal was dismissed "for want of prosecution." *Countrywide Home Loans Inc v Margo Rubens*, unpublished order of the Court of Appeals entered January 13, 2011 (Docket No. 298540). Wachovia's motion to dismiss its claim of appeal was granted and only Countrywide's cross-appeal remains. *Countrywide Home Loans Inc v Margo Rubens*, unpublished order of the Court of Appeals entered August 16, 2011 (Docket No. 298399). Unless the context clearly indicates the contrary, all references to either Margo Rubens or Lawrence Rubens in this opinion refer to the person or persons impersonating them.

nominee of First Magnus Financial Corporation. A title insurance company officer signed an affidavit regarding this purported lost mortgage on December 12, 2007. The affidavit, a copy of a $1,000,000 note allegedly given by Rubens, and a copy of the purported mortgage securing the note, were recorded on December 20, 2007. First Magnus executed an assignment of this mortgage to Bayview on March 12, 2008, which was recorded on March 21, 2008.

Lawrence Rubens also purportedly executed another mortgage to MERS as nominee for Wachovia Mortgage Corporation on July 31, 2007. An affidavit concerning matters relating to title of this alleged lost mortgage was record on January 28, 2008. Attached to affidavit is a copy of the mortgage and a $900,000 promissory note signed by Rubens dated July 31, 2007.

After granting declaratory relief to the Rubens, the trial court issued an opinion and order on February 22, 2010 regarding plaintiff's motion for summary disposition and also LaSalle's similar motion. The court granted LaSalle's motion, ruling that LaSalle had the priority interest to the property under Michigan's race-notice statute, MCL 565.29. The trial court also rejected Countrywide's claim of equitable subrogation because it was a mere volunteer and a sophisticated financial institution not intended to benefit from equitable subrogation.

On April 7, 2010, the trial court entered default judgment in favor of plaintiff against Amira Butler. The judgment provided that plaintiff had "priority over any claim, right or interest" of Butler in the subject property.

On April 8, 2010, the trial court entered its order denying plaintiff and Wachovia's motions for reconsideration of the court's February 22, 2010, opinion and order granting LaSalle priority in the subject property.

Finally, in an opinion and order filed May 14, 2010, the trial court ruled on LaSalle's motion for reconsideration of the April 7, 2010 default judgment. The court wrote: "It is still the ruling of this Court that LaSalle has the priority interest over the subject property." The Court also stated it would "enter a separate order quieting title in LaSalle's name." In the second order filed May 14, 2010, the trial court ruled that "LaSalle Bank's Motion for Entry of Judgment Quieting Title to real property located at 1955 Quarton Road . . . is granted." The trial court further ordered that LaSalle Bank "shall have a fee simple, marketable title and LaSalle Bank's interest is senior and superior to any and all other claimed interests . . . ." With respect to the various documents bearing Butler's name or purported signature, the second order was also "revised and reformed, *ab initio* to delete the names of, and any reference to, Amira Butler and the name of "Jane Doe" (for Amira Butler) are adjudged and decreed to be inserted in her place instead."

As noted already, Wachovia initially filed a claim of appeal in this matter, but its motion to dismiss was granted, leaving only the cross-appeal of Countrywide.

II. STANDARD OF REVIEW

"[T]his Court reviews equitable actions de novo, including actions to quiet title." *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004). Likewise, appellate review of a trial court's decision on a motion for summary disposition is de novo. *Id*. A motion for summary disposition may be granted under MCR 2.116(C)(10) if the pleadings, affidavits, and

other documentary evidence, viewed in a light most favorable to the non moving party, show that there is no genuine issue with respect to any material fact and the moving party is entitled to judgment as matter of law. *Richards v Tibaldi*, 272 Mich App 522, 529; 726 NW2d 770 (2006).

Generally, the granting of equitable relief is within the sound discretion of the trial court when a legal remedy is unavailable. *Trachik v Mandeville*, 487 Mich 38, 45; 790 NW2d 260 (2010). A trial court abuses its discretion when its decision is outside the range of reasonable and principled outcomes. *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008). Where the basis of a trial court's decision is the interpretation and application of a statute to undisputed facts, appellate review is de novo. *Ameriquest Mortgage Co v Alton*, 273 Mich App 84, 95; 731 NW2d 99 (2006).

III. ANALYSIS

We conclude that the trial court erred and abused its discretion by quieting title and granting priority in the subject property to LaSalle because it could not be a bona fide purchaser. LaSalle could acquire no interest in the property from Butler because he had none to convey; therefore, LaSalle could gain no advantage over any other lender under MCL 565.29. For the same reasons, Bayview and Wachovia cannot prevail over Countrywide's interest in the property. And because Countrywide's equitable interest in the property is superior to that of the other lenders, the argument advanced by Bayview and Wachovia that all lenders be awarded a pro rata share of the property also fails.

First, there is no merit to Bayview's argument that the instant action to quiet title was improperly filed under MCL 600.2932. The plain language of § 2932(1) would permit any of the lender-mortgagees in this case to bring a quiet title action against any of the other lender-mortgagees or the purported mortgagors. Bayview relies on the exception to § 2932(1) stated in § 2932(2), which provides that "[n]o action may be maintained under subsection (1) by a mortgagee, his assigns, or representatives for recovery of the mortgaged premises, until the title to the mortgaged premises has become absolute . . . ." MCL 600.2932(2). While subsection (2) precludes obtaining a judgment of possession in the instant proceeding, it does not preclude the parties from litigating the validity and priority of their respective claims to the property. Since the present case involves only the validity and priority of various mortgages, not possession, the case of *Stewart v Oliwek*, 75 Mich App 218; 255 NW2d 9 (1977), is inapplicable.

The first reason the trial court provided for granting priority to LaSalle was that evidence in the form of a closing statement and a purported earnest money payment from Amira Butler to Margo Rubens that indicated Butler treated as valid the loan and mortgage transaction with LaSalle's predecessor, People's Choice. The trial court does not cite any authority for the proposition that a party claiming through a fraudulent transaction may acquire priority over others because the perpetrator of the fraud treated it as valid. The law is to the contrary. Not even an innocent purchaser can acquire priority from a fraudulent transaction. See *Horvath v Nat'l Mortgage Co*, 238 Mich 354, 360; 213 NW 202 (1927); *Lee v Kellogg*, 108 Mich 535; 66 NW 380 (1896). On appeal, LaSalle presents no argument to support this basis for the trial court's decision. LaSalle admits that the Butler transaction was fraudulent, and that its mortgagor, Amira Butler, was a fictitious person. Rather, to support its claim, LaSalle relies on the trial court's subsequent order reforming the name of its mortgagor from "Amira Butler" to

"Jane Doe." But the trial court's reformation of the Butler mortgage was not the basis for the trial court's granting priority to LaSalle. Instead, it was the relief the trial court granted after it had already ruled that it would grant LaSalle priority. Because no authority or persuasive argument supports this reason for granting LaSalle priority, we conclude this reason for the trial court's ruling is abandoned and waived. See *Spires v Bergman*, 276 Mich App 432, 444; 741 NW2d 523 (2007); *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

The trial court also granted LaSalle priority because "La Salle, as successor in interest to People's Choice, filed [sic, recorded] its mortgage first and thus it holds the superior interest to the other parties under . . . MCL 565.29." This reason also fails because there is no evidence that Butler, who conveyed the mortgage to People's Choice, ever received a conveyance, recorded or unrecorded, from a person in the property's chain of title. Thus, LaSalle cannot be a bona fide purchaser for value entitled to priority under MCL 565.29, which provides:

> Every conveyance of real estate within the state hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded.

A "conveyance" for purposes of MCL 565.29 is defined as:

> every instrument in writing, by which any estate or interest in real estate is created, aliened, mortgaged or assigned; or by which the title to any real estate may be affected in law or equity, except wills, leases for a term not exceeding 3 years, and executory contracts for the sale or purchase of lands. [MCL 565.35.]

Clearly, a mortgage is a conveyance within the meaning of MCL 565.29. *Church & Church Inc v A-1 Carpentry*, 281 Mich App 330, 345; 766 NW2d 30 (2008), mod on other grounds 483 Mich 885 (2009); *Ameriquest Mortgage Co*, 273 Mich App at 93, applying MCL 565.25(4).[2]

Under MCL 565.29, the holder of a real estate interest that first records its interest generally has priority over prior unrecorded and subsequent purchasers. *Richards*, 272 Mich App at 539. But by its plain terms, for LaSalle to avail itself of the protection of MCL 565.29 with respect to the Amira Butler mortgage, LaSalle must establish that People's Choice was a "purchaser in good faith" for value or a bona fide purchaser. A good faith or bona fide purchaser is one who purchases without notice of a defect in the grantor's title. *Church & Church Inc*, 281 Mich App at 345. Notice of a defect depriving a purchaser of good faith may be either actual or constructive. *Richards*, 272 Mich App at 539. Constructive notice exists

> [w]hen a person has knowledge of such facts as would lead any honest man using ordinary caution, to make further inquiries concerning the possible rights of another in real estate, and fails to make them, he is chargeable with notice of what

[2] Repealed by 2008 PA 357, effective December 23, 2008.

> such inquiries and the exercise of ordinary caution would have disclosed. [*Kastle v Clemens*, 330 Mich 28, 31; 46 NW2d 450 (1951).]

Further, "'[i]t is *Notice*, not *knowledge*, which is required; . . . whatever is sufficient to direct to attention of a purchaser to the prior rights or equities of third persons, and to enable him to ascertain their nature by inquiry, should be held sufficient.'" *Id*., quoting *Wilcox v Hill*, 11 Mich 256, 263-264 (1863). Constructive notice is imputed to a purchaser regarding "'all matters properly of record, whether there is actual knowledge of such matters or not.'" *Richards*, 272 Mich App at 540, quoting Cameron, Michigan Real Property Law (3d ed), §11.24, p 399. A person who knows at the time a conveyance is received that the grantor lacks title to the property being conveyed or has notice that the grantor may not have title cannot be a bona fide purchaser. *Richards*, 272 Mich App at 539-540; *Fitzhugh v Barnard*, 12 Mich 104, 110 (1863).

In this case, there is no record of a conveyance to Amira Butler in the chain of title to the property. "[A] grantee is chargeable with notice of whatever appears in the chain of title through which he claims." *Fitzhugh*, 12 Mich at 110. People's Choice, LaSalle's predecessor, had notice that no conveyance to Butler was recorded, and, therefore, that a defect in her title might exist. Although there was evidence that Butler purportedly was purchasing the property from Margo Rubens—the settlement statement and purported earnest money payment—there is no evidence that a deed or other conveyance from Rubens to Butler ever existed. In *Lee*, 108 Mich at 536-537, the Court held an assignor's failure to produce the documents to be assigned was sufficient to put the purchaser on notice of a possible defect in the assignor's title. Here, because there is no evidence of a conveyance, recorded or unrecorded, to Amira Butler, People's Choice, if not having actual notice of a possible defect in Butler's title to the property, had constructive notice. "No one taking . . . from another knowing him to have no title, or having notice of his want of title, can be a *bona fide* purchaser." *Fitzhugh*, 12 Mich at 110. Thus, People's Choice was not a good faith purchaser entitled to the protection of MCL 565.29. *Richards*, 272 Mich App at 539-540. The trial court erred by granting priority to LaSalle, People's Choice's successor.

Our conclusion that LaSalle gained no advantage under MCL 565.29 by being the first to record its mortgage is also supported by the undisputed fact that Amira Butler never lawfully or unlawfully obtained an interest in the subject property. It is axiomatic that a conveyance by a party with no interest in the property conveys nothing. *Richards*, 272 Mich App at 540; see also *von Meding v Strahl*, 319 Mich 598, 608; 30 NW2d 363 (1948). The recording of an invalid conveyance also adds nothing. "[T]he recording of an instrument cannot, of itself, make an invalid grant valid." *von Meding*, 319 Mich at 609; see also *Special Property VI, LLC v Woodruff*, 273 Mich App 586, 591; 730 NW2d 753 (2007).

For the same reasons that LaSalle has not acquired an interest superior to that of Countrywide, neither did Bayview or Wachovia. The undisputed evidence established that any conveyance from Lawrence Rubens to Bayview or Wachovia was a forgery. A forged instrument conveys no rights on a grantee or those claiming through the grantee; even a good faith purchaser can acquire no rights where title is traced to a forged instrument. See *Special Property VI*, 273 Mich App at 591. "'[T]here can be no such thing as a bona fide holder under a forged deed, whose good faith confers any rights against the party whose name has been forged, or those claiming under him.'" *Id*., quoting *VanderWall v Midkiff*, 166 Mich App 668, 685; 421 NW2d 263 (1988). Thus, "those who subsequently innocently acquired interests under the

forged instrument are in no better position as to title than if they had purchased with notice." *VanderWall*, 166 Mich App at 685. "Forged papers cannot be made the basis of a recovery, either at law or in equity, against the supposed maker, or those in good faith holding and owning the genuine papers." *Lee*, 108 Mich at 536. Consequently, any deed or mortgage resting on forgery is null and void. *Felcher v Dutton*, 265 Mich 231, 233; 251 NW 332 (1933). These cases hold that no rights can be acquired under a forged conveyance, and neither innocent purchase nor recording change this result. *Horvath*, 238 Mich at 360; *Lee*, 108 Mich at 537.

LaSalle uses these principles to argue that Countrywide did not meet its burden of establishing a prima facie case to support its own claimed interest in the property because Countrywide's mortgage was obtained in a fraudulent transaction from a mortgagor with no interest in the property. We conclude this argument fails. First, that all mortgage transactions at issue involved fraud does not negate the requirements MCL 565.29, or provide any basis for concluding that LaSalle has priority by recording its claimed interest first. Second, the fact that Countrywide took its mortgage from an identity thief does not alter that LaSalle and Bayview and Wachovia are not good faith purchasers. They took mortgages from persons outside the chain of title claiming through forged deeds, if any at all, and who had no interest in the property. Countrywide, on the other hand, traces its interest through a mortgage given by an imposter of Margo Rubens who received a valid warranty deed conveyed by the last legitimate owner of the property. Moreover, despite argument to the contrary, evidence establishes that the mortgage conveyed to Countrywide secured a loan that paid off the two prior purchase money mortgages that financed the imposter Margo Rubens' purchase of the property from the last legitimate title holder. Although the settlement statement mistakenly listed American Home Mortgage twice, the amounts listed for both mortgages to be paid, the discharge of the American Home mortgage before any of the other mortgage-loan transactions at issue, and the discharge of the American Brokers Conduit mortgage combine to establish that Countrywide's loan paid off the two prior mortgages by which the imposter purchased the property from the last legitimate title holder. In sum, the equities of the underlying facts and circumstances favor Countrywide.

In this case, plaintiff seeks equitable relief declaring its mortgage interest has priority over defendants' interests. An equitable right or interest "'derives not from a declaration of substantive law, but from the broad and flexible jurisdiction of courts of equity to afford remedial relief, where justice and good conscience so dictate.'" *Trachik*, 487 Mich at 45, quoting 30A CJS, Equity, § 93, at 289 (1992). A court's equitable power is generally reserved for unusual circumstances, such as mutual mistake or fraud. *Ameriquest Mortgage Co*, 273 Mich App at 99-100. All parties agree that this litigation arises out of massive fraud. Because none of the other competing lenders is a good faith purchaser of a valid mortgage who may claim priority under MCL 565.29, it is unnecessary to decide if Countrywide is entitled under the doctrine of equitable subrogation to the rights of American Home Mortgage or American Brokers Conduit. Rather, it is sufficient to conclude that if the fraud of Countrywide's mortgagor precludes a valid mortgage from arising, then the facts and circumstances warrant finding that Countrywide took an equitable mortgage to the extent its loan paid off the two purchase-money mortgages that financed the last legitimate conveyance. For these reasons, we conclude that Countrywide should be granted an equitable mortgage with priority over the other mortgage lenders to the extent it paid the mortgage loans of American Home Mortgage and American Brokers Conduit.

Since its inception, Michigan has recognized the doctrine of equitable mortgages. See *Abbott v Godfroy's Heirs*, 1 Mich 178, 181 (1849), holding that an equitable mortgage arises when the parties intend by a written agreement to create a lien on real estate for the payment of a debt but the writing is legally defective. Cameron[3] describes equitable mortgages as follows:

> A court of equity may impose and foreclose an equitable mortgage on a parcel of real property when no valid mortgage exists but some sort of lien is required by the facts and circumstances of the parties' relationship. Generally an equitable mortgage will be imposed if it is shown that there was an intention to place a lien on real estate or a promise that the real estate would be used as security but for some reason the intended purpose was not accomplished. . . . For example, a defective mortgage may have been executed. *Abbott v Godfroy's Heirs*, 1 Mich 178 (1849). [1 Cameron, *Michigan Real Property Law* (3d ed), Mortgages, § 18.5, pp 681-682.]

"The whole doctrine of equitable mortgages is founded upon the ancient, cardinal maxim of equity which regards that as done which was agreed to be done . . . ." *Schram v Burt*, 111 F2d 557, 562 (CA 6, 1940). Even without a written contract, "'from the relations of the parties, equity will declare a lien out of considerations of right and justice, based upon those maxims which lie at the foundation of equity jurisprudence.'" *Senters v Ottawa Savings Bank, FSB*, 443 Mich 45, 53-54; 503 NW2d 639 (1993), quoting *Kelly v Kelly*, 54 Mich 30, 19 NW 580 (1884).

In the present case, an equitable mortgage arises in favor of Countrywide from the loan agreement between Countrywide and the imposter who received the fee by warranty deed from the last legitimate owner, and from the mortgage the imposter conveyed. The loan agreement and mortgage both identify the subject property and show an intention that the property will serve as security for the loan, essential elements of an equitable mortgage. *In re Moukalled Estate*, 269 Mich App 708, 719; 714 NW2d 400 (2006); *Abbott*, 1 Mich at 181. But a legal defect—the fraud of the imposter—prevents a valid mortgage. See *Felcher*, 265 Mich at 233 (a forged conveyance is null and void). Even though the mortgage conveyed to Countrywide is defective, an equitable mortgage arises. See *Abbott*, 1 Mich 181 (equitable mortgage doctrine overcomes legal defects in the mortgage), and *Schram*, 111 F2d at 562-564 (equitable mortgage imposed where wife's signature mortgage of property held by the entireties was forged).

LaSalle argues that Countrywide is not entitled to an equitable remedy because "[a] party that has an adequate remedy at law is not entitled to an equitable lien." *Ypsilanti Charter Twp v Kircher*, 281 Mich App 251, 284; 761 NW2d 761 (2008). LaSalle argues that Countrywide has an adequate remedy at law: a lawsuit to enforce its title insurance policy if one were purchased. We find the premise of LaSalle's argument faulty. Countrywide has no legal remedy if its mortgage is defective and the imposter is either dead or has vanished. And, any relief that Countrywide might obtain under a title insurance policy would be based in contract. It would not be an action at law on the underlying mortgage-loan transaction.

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[3] John G. Cameron, Jr.

LaSalle also argues that Countrywide is not entitled to priority under equitable principles because only its mortgagor committed fraud, which did not prevent Countrywide from obtaining a senior position by recording its mortgage. LaSalle relies on *Cheff v Haan*, 269 Mich 593, 598, 257 NW 894 (1934): "Equity will create a lien only in those cases where the party entitled thereto has been prevented by fraud, accident or mistake from securing that to which he was equitably entitled." We conclude this argument is also unavailing because LaSalle, as well as Bayview and Wachovia, are not good faith purchasers of valid mortgages entitled to the protection of MCL 565.29. Furthermore, the underlying fraud of the imposter that might prevent a valid mortgage from arising is cured by the equitable mortgage doctrine.

We find that the requirements for an equitable mortgage are satisfied here. Countrywide obtained its mortgage from an imposter who received a valid warranty deed to the property conveyed by the last legitimate owner. The mortgage and the note it secured clearly indicated the parties' intention that the property serve as security for the debt. The underlying fraud of the imposter, however, renders the mortgage defective. Because the evidence establishes that Countrywide's loan paid off the two prior purchase money mortgages that financed the imposter's purchase of the property from the last legitimate title holder, combined with the fact that the competing mortgage lenders took forgeries of persons not even in the chain of title, the underlying facts and circumstances favor finding an equitable mortgage in favor of Countrywide.

Contrary to the argument of the other mortgage lenders, the equities among the competing mortgage lenders are not equal. And, awarding Countrywide an equitable mortgage does not permit Countrywide to leap-frog over prior valid and recorded mortgages because LaSalle, Bayview, and Wachovia were involved in subsequent transactions that were also fraudulent and more removed than that between Countrywide and the Margo Rubens imposter.

We therefore vacate the trial court's opinion and order regarding priority dated February 22, 2010. We also vacate the trial court's orders quieting title and granting other relief to LaSalle Bank filed May 14, 2010. We remand to the trial court for entry of an order granting plaintiff an equitable mortgage to the extent its loan paid off the mortgages of American Home Mortgage and American Brokers Conduit, quieting Countrywide's title, and granting Countrywide's equitable mortgage priority over defendants.

We reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs under MCR 7.219 as no party prevailed in full.

/s/ Deborah A. Servitto
/s/ Jane E. Markey
/s/ Kirsten Frank Kelly